UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No 685

Case No. 722 : LOGUINOV

Against : The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: M. Samar Sen, President; M. Hubert Thierry; M. Mayer Gabay;

Whereas at the request of Evgueni Loguinov, a staff member of the United Nations Industrial Development Organisation (hereinafter referred to as UNIDO), the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for the filing of an application with the Tribunal to 31 January 1993;

Whereas, on 3 November 1992, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 31 March 1993, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal to order the rescission of the decision by the Standing Committee of the United Nations Joint Staff Pension Board (the Board), upholding the decision by the Secretary of the Board, to deny the Applicant his right to restore prior contributory service with the Fund;

Whereas the Respondent filed his answer on 29 April 1994;

Whereas the Applicant filed written observations on 26 May 1994;

Whereas the Applicant filed further written observations on 10 August 1994;

Whereas the facts in the case are as follows:

The Applicant first served the Organisation from 1967 to 1972, on secondment from the USSR Government, as a Translator/ Reviser at the P-4 level, in the Russian Translation Section of the United Nations Secretariat in New York. He was a participant in the United Nations Joint Staff Pension Fund (the Fund) from 23 October 1967 to 7 September 1972. Upon separation he was paid a withdrawal settlement, in accordance with his payment instructions. The Applicant rejoined the service of the Organization from 1974 to 1979, again on secondment, and re-entered the Fund as a participant on 20 October 1974. He did not restore his prior period of contributory service. On 29 December 1979, the Applicant separated from the Organization, opting again for a withdrawal settlement, which was paid to him in February 1980, in accordance with his payment instructions.

In 1981, after the Applicant had separated from the Organization for the second time, and before he entered service again for the third time, identical transfer agreements were concluded between the Fund and the USSR, the Ukrainian SSR and the Byelorussian SSR. These agreements enabled staff members to transfer pension rights from the Fund to the Social Security Fund of these countries.

On 4 November 1984, the Applicant entered the service of UNIDO, on secondment from the USSR Government, and again became a Fund participant. In early 1986, following the Tribunal's Judgement 360, Taylor, the Applicant was informed that he had the right to restore his periods of prior contributory service in the Fund. On 9 May 1986, he completed form PENS C/1, electing to restore his two prior periods of service. On 2 February 1987, the Secretary of the Board wrote to the Applicant regarding the amount he had to pay in order to effect the restoration, pointing out that he had the option to pay this amount in a lump sum or in specified monthly

instalments. The letter stated, "the remittance of a lump sum or the commencement of the instalments is expected within 90 days of the date of this memorandum, otherwise your right to restore will be deemed to be cancelled." The Applicant made no payment.

On 13 September 1990, the Applicant resigned from the Ministry of Foreign Affairs, with effect from 30 September 1990. His subsequent letter of appointment, with effect from 4 November 1990, made no reference to secondment. Under "Special Conditions", it noted: "On assignment from UN HQ". On 30 November 1990, the Secretary of the Board, in reply to a query dated 26 November 1990, from the Secretary of the UNIDO Staff Pension Committee concerning the Applicant, stated that the Applicant's right of restoration had been deemed cancelled in view of his failure to make the required payment, pursuant to administrative rules F.3 and F.4 of the Fund. This letter was forwarded to the Applicant, who wrote to the Secretary of the Board on 12 December 1990, explaining that he had been on secondment from the Government of the USSR until his resignation from government service in October 1990. He stated that "all the matters concerning my pension rights - its transfer, restoration, etc., including its disposal - had been handled by my government." With effect from 3 November 1990, he noted that he was "with UNIDO as a free agent" and suggested several alternative methods of lump sum and monthly payments that he might make to cover the period since 2 February 1987, for restoration of his prior periods of contributory service.

In a reply dated 14 January 1991, the Secretary of the Board informed the Applicant that his right of restoration was not affected by his secondment status. He noted that the Applicant had the right to request restoration of prior contributory service, and that he had actually done so, but that as payment had not been made within the applicable time limit, the right of restoration had been cancelled.

In July 1991, the Board decided to permit Fund participants from the former USSR, Ukrainian SSR and Byelorussian SSR, who had transferred their UN Pension Fund rights to the USSR Social Security

Fund, in accordance with the transfer agreements between the Fund and these governments, to restore their prior contributory service. In a letter to the Secretary of the Board, dated 14 October 1991, the Applicant renewed his request for restoration on the basis of this decision. In a reply dated 1 November 1991, the Secretary of the Board informed the Applicant that the Board's 1991 decision did not apply in his case, as he had not transferred his pension rights under these agreements.

In a letter dated 14 February 1992, the Applicant requested a review by the Standing Committee of the Board of the decision by the Secretary of the Board. On 2 July 1992, the Standing Committee considered the Applicant's case, and on 27 July 1992, the Secretary of the Board informed the Applicant that the Standing Committee had upheld the Secretary's decision to deny the Applicant's request for restoration. The letter reads, in part:

> "... Under the circumstances of your case, no other Fund participant could restore his or her prior contributory service: having been advised of the payment required to effect the restoration, you had failed to make the necessary restoration payment(s) in accordance with the Fund's administrative rule F.3, and consequently your right of restoration was deemed to be cancelled under administrative rule F.4 ..."

On 31 March 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. While on secondment, the Applicant was unable to exercise his pension rights freely, as forced deductions by the USSR Government from his salary prevented him from meeting the financial terms required for restoration.

2. The Fund's administrative rule F.3 should not apply. The Applicant's case should be regarded as exceptional, as circumstances beyond his control made it impossible for him to comply with the Fund's Rules.

3. By opting for the UN pension, the Applicant lost his national pension rights. The possible loss of UN pension rights for the ten years of his previous service, and the loss of national pension under the extraordinary circumstances of the dissolution of the USSR, leaves the Applicant in a precarious position and should be taken into account.

Whereas the Respondent's principal contentions are:

1. There is no discretion vested in the Secretary of the Board with respect to the right of restoration, which is granted under clearly delineated circumstances.

2. By failing to meet the conditions in the Regulations and Rules of the Fund, the Applicant lost his restoration rights. The reasons for the failure are not relevant.

3. The conditions of the Applicant's secondment by the USSR Government have no bearing on the Applicant's entitlement under the Fund's Regulations.

The Tribunal, having deliberated from 27 October to 11 November 1994, now pronounces the following judgement:

I. The issue on which the Tribunal is asked to make a decision is a narrow one: Should it uphold the decision of the Standing Committee of the Board, confirming the ruling by the Secretary of the Board which denied to the Applicant the right to restore prior periods of contributory service from 23 October 1967 to 7 September 1972, and from 20 October 1974 to 29 December 1979. The reason given for the denial was the failure by the Applicant to comply with the requirements of rule F.3 of the Administrative Rules of the Fund regarding payments to be made, if he wanted the restoration for which he had applied, to take effect.

II. The Applicant asks the Tribunal to rescind that decision because he claims it is based on strictly legal grounds and ignores

his situation as a staff member who, at the relevant time, was on secondment from the Government of the former USSR. This, he asserts, made it impossible for him to comply with the Administrative Rule cited above. He claims he should, therefore, be allowed to restore despite his non-compliance with that Rule.

III. The Applicant cites only one reason bearing directly on his alleged inability to comply with administrative rule F.3. For the rest, the Applicant objects to the general policy of the Government of the former USSR in regard to the pension rights of their seconded officials. He refers to the problems of those who were covered by a Transfer Agreement between the Fund and the USSR. The Applicant's right to restore the periods in question had not, however, been affected by this agreement, which came into force only in 1981, after the Applicant had separated from service in 1979.

IV. The one contention bearing directly on the Applicant's alleged inability to comply with the requirements of administrative rule F.3 is the assertion that "as a pre-condition for granting me secondment, the Government had wrung from me the pledge to surrender to it some 50 per cent of my UN salary, as well as my UN pension rights at the end of my service with the United Nations."

V. This assertion, pointing to the reported practice of the former USSR, does not, however, explain the Applicant's failure to comply with administrative rule F.3. That rule applies only after a participant has elected to restore prior service, which the Applicant did by completing the requisite forms (PENS C/1) on 9 May 1986. If at that time his situation was as he describes it, it is not clear what was the purpose of his request to restore, as he seemingly neither had the money to pay for the restoration nor would have derived a benefit from it, even if he could have made the payment required.

VI. Knowing the penalty for failure to comply with the conditions for payment if his request was accepted, namely that his right to restore would be lost irrevocably, under administrative rule F.4, there was no evident reason for the Applicant to seek restoration at that time. Nevertheless, the Tribunal must take into account that he did in fact ask for the restoration of his pension rights and that he must bear the consequences.

VII. The Tribunal, while not unaware of or unsympathetic to the problems apparently faced by the Applicant and others in similar situations in respect of their pension rights, is unable to find that in this particular case, they would legally permit derogation from the application of the Regulations and Administrative Rules of the Fund.

VIII. The Tribunal, for the reasons set forth above, finds that the decision of the Standing Committee of the Board, denying to the Applicant the right to restore the prior service in question, should be upheld, and rejects all claims by the Applicant.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Mayer GABAY
Member

New York, 11 November 1994

R. Maria VICIEN-MILBURN
Executive Secretary